

Introduced by Senator Florez

January 11, 2010

An act to amend Sections 17276.9 and 24416.9 of, and to add Sections 17207.7, 19057.5, 19306.5, and 24347.7 to, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 876, as introduced, Florez. Income taxation: net operating losses: fraudulent investment arrangement losses.

The Personal Income Tax Law and the Corporation Tax Law, in modified conformity with federal income tax laws, allows a deduction for losses sustained during the taxable year and not compensated for by insurance or otherwise. Those state laws conform to specified revenue rulings and revenue procedures of the Internal Revenue Service regarding treatment of losses due to investment arrangements discovered to be criminally fraudulent, except that, among other things, net operating loss carrybacks and carryforwards are not allowed.

This bill would provide a safe harbor for determining the year in which those losses attributable to criminal fraud occurred, as described in a specified revenue procedure of the Internal Revenue Service, and would allow a net operating loss carryover or carryback of any resulting deduction from the losses in conformity with federal income tax law.

This bill would make a legislative finding and declaration relating to the public purpose served by the bill.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 17207.7 is added to the Revenue and Taxation Code, to read:

17207.7. (a) (1) For each taxable year beginning on or after January 1, 2008, if a taxpayer that is a qualified investor, as defined in the Internal Revenue Service's Revenue Procedure 2009-20, follows the procedures described in Section 6 of that Revenue Procedure for federal income tax purposes, and follows the same procedures for purposes of this part, the Franchise Tax Board shall not challenge the treatment described in paragraph (2) by the qualified investor with respect to the qualified loss.

(2) The treatment described in this paragraph means all of the following:

(A) The loss is deducted as a theft loss.

(B) The taxable year in which the theft was discovered within the meaning of Section 165(e) of the Internal Revenue Code is the discovery year described in Section 4.04 of the Internal Revenue Service's Revenue Procedure 2009-20.

(C) The amount of the deduction is the amount specified in Section 5.02 of the Internal Revenue Service's Revenue Procedure 2009-20.

(b) To the extent a deduction resulting from the application of this section results in a net operating loss, Section 172 of the Internal Revenue Code, as applicable for federal income tax purposes for a taxable year, shall be applicable for purposes of this section for the same taxable year, without regard to Section 17276.

SEC. 2. Section 17276.9 of the Revenue and Taxation Code is amended to read:

17276.9. (a) Notwithstanding Sections 17276, 17276.1, 17276.2, 17276.4, 17276.5, 17276.6, and 17276.7 of this code and Section 172 of the Internal Revenue Code, no net operating loss deduction shall be allowed for any taxable year beginning on or after January 1, 2008, and before January 1, 2010.

(b) For any net operating loss or carryover of a net operating loss for which a deduction is denied by subdivision (a), the carryover period under Section 172 of the Internal Revenue Code shall be extended as follows:

(1) By one year, for losses incurred in taxable years beginning on or after January 1, 2008, and before January 1, 2009.

(2) By two years, for losses incurred in taxable years beginning before January 1, 2008.

(c) Notwithstanding subdivision (a), a net operating loss deduction shall be allowed for carryback of a net operating loss attributable to a taxable year beginning on or after January 1, 2011.

(d) The provisions of this section shall not apply to a taxpayer with net business income of less than five hundred thousand dollars (\$500,000) for the taxable year. For purposes of this subdivision, business income means:

(1) Income from a trade or business, whether conducted by the taxpayer or by a passthrough entity owned directly or indirectly by the taxpayer. For purposes of this paragraph, the term “passthrough entity” means a partnership or an “S” corporation.

(2) Income from rental activity.

(3) Income attributable to a farming business.

(e) *This section shall not apply to a loss resulting from the application of Section 17207.7.*

SEC. 3. Section 19057.5 is added to the Revenue and Taxation Code, to read:

19057.5. Section 6501(h) of the Internal Revenue Code, relating to limitations on credit or refund with respect to the special period of limitation with respect to net operating loss or capital loss carrybacks, shall apply to a net operating loss resulting from the application of Section 17207.7 or Section 24347.7, except as otherwise provided.

SEC. 4. Section 19306.5 is added to the Revenue and Taxation Code, to read:

19306.5. Section 6511(d)(2) of the Internal Revenue Code, relating to the limitations on credit or refund with respect to the special period of limitation with respect to net operating loss or capital loss carrybacks, shall apply to a net operating loss resulting from the application of Section 17207.7 or Section 24347.7, except as otherwise provided.

SEC. 5. Section 24347.7 is added to the Revenue and Taxation Code, to read:

24347.7. (a) (1) For each taxable year beginning on or after January 1, 2008, if a taxpayer that is a qualified investor, as defined in the Internal Revenue Service’s Revenue Procedure 2009-20, follows the procedures described in Section 6 of that Revenue Procedure for federal income tax purposes, and follows the same

1 procedures for purposes of this part, the Franchise Tax Board shall
2 not challenge the treatment described in paragraph (2) by the
3 qualified investor with respect to the qualified loss.

4 (2) The treatment described in this paragraph means all of the
5 following:

6 (A) The loss is deducted as a theft loss.

7 (B) The taxable year in which the theft was discovered within
8 the meaning of Section 165(e) of the Internal Revenue Code is the
9 discovery year described in Section 4.04 of the Internal Revenue
10 Service's Revenue Procedure 2009-20.

11 (C) The amount of the deduction is the amount specified in
12 Section 5.02 of the Internal Revenue Service's Revenue Procedure
13 2009-20.

14 (b) To the extent a deduction resulting from the application of
15 this section results in a net operating loss, Section 172 of the
16 Internal Revenue Code, as applicable for federal income tax
17 purposes for a taxable year, shall be applicable for purposes of this
18 section for the same taxable year, without regard to Section 24416.

19 SEC. 6. Section 24416.9 of the Revenue and Taxation Code
20 is amended to read:

21 24416.9. (a) Notwithstanding Sections 24416, 24416.1,
22 24416.2, 24416.4, 24416.5, 24416.6, and 24416.7 of this code and
23 Section 172 of the Internal Revenue Code, no net operating loss
24 deduction shall be allowed for any taxable year beginning on or
25 after January 1, 2008, and before January 1, 2010.

26 (b) For any net operating loss or carryover of a net operating
27 loss for which a deduction is denied by subdivision (a), the
28 carryover period under Section 172 of the Internal Revenue Code
29 shall be extended as follows:

30 (1) By one year, for losses incurred in taxable years beginning
31 on or after January 1, 2008, and before January 1, 2009.

32 (2) By two years, for losses incurred in taxable years beginning
33 before January 1, 2008.

34 (c) Notwithstanding subdivision (a), a net operating loss
35 deduction shall be allowed for carryback of a net operating loss
36 attributable to a taxable year beginning on or after January 1, 2011.

37 (d) The provisions of this section shall not apply to a taxpayer
38 with income subject to tax under this part of less than five hundred
39 thousand dollars (\$500,000) for the taxable year.

1 *(e) This section shall not apply to a loss resulting from the*
2 *application of Section 24347.7.*

3 SEC. 7. The Legislature finds and declares that this act fulfills
4 a statewide public purpose by providing tax relief for taxpayers
5 who are innocent victims of fraudulent investment schemes.

6 SEC. 8. This act provides for a tax levy within the meaning of
7 Article IV of the Constitution and shall go into immediate effect.

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